

with which the Senator from North Dakota pursues this issue. This issue of taxing or requiring retailers or sellers to tax that are not located within the State, that do not have a physical presence in the State, do not have a nexus in the State, is an argument that is as old as our Republic.

One of the problems our Founders had, in going from the Articles of Confederation to our current Federal Republic, was that different States were imposing fines, taxes, and tariffs on interstate commerce. So that was one of the reasons we went to the current form we have—to at least have within our country a free trade zone and not have burdensome taxes on the flow of interstate commerce.

The idea the Senator from North Dakota, Mr. DORGAN, proposes, with long, deliberative examination, may be worthwhile. But the issue at hand at this moment is that the moratorium on Internet access taxes and discriminatory taxes expired last Sunday, October 21.

This issue in recent years has been worked on time after time. It first came up in the midst of the *Bellas Hess* decision and then came up more recently in the Supreme Court *Quill* decision. In those situations, the issue was catalog sales. But whether the catalog company is in Maine or New Hampshire or Oregon or whatever other State, the Supreme Court ruled that these States could not compel those companies—*Quill* at that particular time—to remit sales taxes to a State in which they had no physical presence. So that is the constitutional parameter we are under.

This issue of trying to get around the Supreme Court decisions, trying to come up with simplification, and hamstringing the Senate in the future to vote on whatever this may be as far as simplification is concerned, while it is a very creative and, I think, very thoughtful approach, to me, we really have no time to act.

Let's recognize that the other body, the House, has already acted. It is a 2-year extension on the very simple, clear, and clean issue of having a moratorium on access taxes and discriminatory taxes on the Internet by States or localities.

Please note, Mr. President, when this moratorium was first put on 3 years ago, several States and localities had imposed access taxes and discriminatory taxes, and they are now grandfathered. So here we are today generally stuck with those taxes being imposed in those jurisdictions, in those States.

The longer this lapses, the more likely the legislative process will apply, whether in a local jurisdiction or in a State. We will end up with more of these taxes, and we will never be able to get rid of them. They will be like the Spanish-American War tax, the luxury tax that was put on telephone service to finance the Spanish-American War. We won that war 100 years

ago, but that tax is still on telephone service.

While this is a good idea and something that can be worked on over the years, if something such as this should pass the Senate, it is obviously different from what has passed the House, which means it would have to go to a conference committee. Who knows when that might meet? We may be here only a few more weeks, and most likely those differences would not be ironed out.

It is fine to work on simplification. It has been worked on for decades. I don't think this issue of access taxes on the Internet or discriminatory taxes ought to be held hostage to that very problematic although understandable concern of the Senator from North Dakota and many others.

With that, I object to the request of the Senator from North Dakota.

The PRESIDING OFFICER. Objection is heard.

The Senator from North Dakota.

Mr. DORGAN. Mr. President, the Senator from Virginia and I have had some nice conversations on this subject. I know he feels strongly about this. I did want to clear up a couple things.

First of all, when someone purchases something on the Internet or from a catalog, there is actually a tax owed in most cases. It is just that it is never paid. Most Americans when they order something from a catalog are required to submit a use tax to the State, because the seller wasn't required to collect the sales tax. The buyer is supposed to send a use tax to the State government, but they never do and never will because it would require literally millions of tax returns being filed for a \$1.20 or \$2.80 purchase. That is why it was always much more effective to collect a sales tax at the source.

I agree with those who say we don't think catalog sellers or Internet sellers or remote sellers ought to be required to subscribe to 7,000 different taxing jurisdictions; that is not fair. I agree with that. That is why I say, if you are going to simplify the collection system and allow it to have the remote sellers collect it, then you really need to simplify it in a way that is substantive.

Let me make this point also: It is not the case that the Supreme Court has said there is no inherent right for State governments to tax in these circumstances. That is not what the Supreme Court has said. They said the sole arbiter of what the States can or can't do with respect to what is called nexus or whether they have jurisdiction is the Congress because it deals with the commerce clause. That decision is only reserved for the Congress, not for the States. That is what the Supreme Court decision said.

That is why Congress has to decide what to do and how to do it at this point. While we perhaps have a disagreement at this moment, I hope we might be able to figure out how to resolve it. It does not make any sense to

me, if we are going to lose \$20 or \$30 or \$40 billion in local revenues, to have somebody hire tens of thousands of tax collectors to go knock on doors and ask for them to submit their \$3.38 in use tax they owe. That doesn't make any sense. I don't believe the Senator from Virginia or anyone else would want to do that. All you do is add to the employment rolls of the Government and hassle people.

It makes far more sense to require State and local governments to simplify their local sales and use tax base and then to say to the remote sellers, those above \$5 million a year in sales: Collect this now and remit it to the States and save everybody from trouble. We simplified the system for you. We simplified it for the consumer. Everybody wins. That is the point of all of this.

With respect to the question of the tax incidence that the Senator from Virginia mentioned, as I said before, there is no new tax here. This is not a discussion about a new tax versus an old tax or whether there is a tax versus not a tax; this is a question of how you collect a tax that is owed, in what circumstances would it be fair to require a remote seller to collect it; that is all.

On the final subject of this issue of an expiring moratorium, I supported the moratorium. I was on the floor of the Senate at that point and worked with Senators WYDEN, MCCAIN, and others. I supported the moratorium. I now support it and would be willing to extend it until June 30, 2002 at this point. We can perhaps extend it beyond that as we go along.

My expectation is that the narrow time-frame in which this moratorium has expired will not give opportunity to those who might want to take advantage of it. I frankly don't think that is going to happen. I am here on the floor perfectly prepared to work with the Senator from Virginia and others to extend this moratorium, if he will work with me and Senators ENZI, VOINOVICH, GRAHAM, KERRY and other colleagues to help solve the other side of the equation. And we may not solve it all now, but put a provision in that says this is congressional intent. If he will work with me to solve the second side of the issue, I will work with him to solve the first side. We will make some progress on this issue.

This is a complicated issue. I admit that. It is one of some consequence with more and more remote sales occurring. More than forty Governors have now written letters saying: We have literally tens of billions of dollars we are not going to collect, much of which is needed to run our school system. You need to help us find a way to collect that revenue that is owed.

We say to the Governors: God bless you. You have a problem. We will help you solve that problem, but you have to do something for us. You have to simplify your system so that we are not going to whipsaw businesses out there that have to comply with thousands of different jurisdictions.